

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ADONIS L. THOMPSON,
Petitioner,

Case No. 3:09-cv-823-AC

v.

ORDER

MARK NOOTH,
Respondent.

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Attorney for Petitioner

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Attorney General
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MARSH, Judge.

Magistrate Judge John Acosta filed his Findings and
Recommendation on March 13, 2012. The matter is now before me

pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. See 28 U.S.C. § 636(b)(1)(B); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982); accord Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*). Petitioner has filed timely objections. Therefore, I have given the file of this case a *de novo* review.

Petitioner objects to Judge Acosta's conclusion that "[i]n light of all of [the] evidence against Petitioner, the fact that his trial counsel did not object to the arresting officer's reference to Petitioner's outstanding parole violation warrant does not establish a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Findings and Recommendation at 10. Whether reviewed under the deferential standards of 28 U.S.C. § 2254(d) or *de novo*,¹

¹ See Williams v. Cavazos, 646 F.3d 626, 637-39 (9th Cir. 2011), cert. granted in part, 132 S.Ct. 1088 (2012) (when it is clear state court did not reach merits of federal claim, review is *de novo*); Harrington v. Richter, 131 S.Ct. 770, 784-85 (2011) (when federal claim has been presented to state court and the state court denies relief, there is presumption that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary).

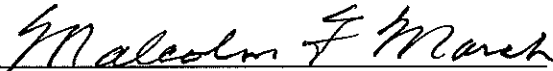
I agree with Judge Acosta's conclusion that petitioner has failed to demonstrate that, but for counsel's alleged error, there is a reasonable probability that the result of the proceeding would have been different. Accordingly, habeas relief is not warranted.

CONCLUSION

Based on the foregoing, I ADOPT the Findings and Recommendation (#28). Petitioner's habeas petition (#1) is DENIED, and this proceeding is DISMISSED, with prejudice. Because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. See 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 17 day of April, 2012


Malcolm F. Marsh
United States District Judge